

**ARBITRATION ACT 1996**

In the matter of an

**ARBITRATION UNDER THE TERMS OF THE COMMERCIAL RENT (CORONAVIRUS) ACT 2022**

Between

[REDACTED]

(applicant)

and

[REDACTED]

(respondent)

**PRE-ARBITRATION RULING**

Relating to premises known as

[REDACTED]

[REDACTED]

LEEDS

[REDACTED]

1. The applicant is [REDACTED] being the Tenants of premises known as [REDACTED] [REDACTED], Leeds [REDACTED].
2. The respondent is [REDACTED] who are the Landlord.
3. The applicant is represented by [REDACTED] who is a Director of the applicant company.
4. The respondent is represented by [REDACTED] of [REDACTED], solicitors of [REDACTED] [REDACTED]. [REDACTED] of the same firm was originally the representative.
5. The applicant is seeking relief from a Protected Rent Debt (PRD) pursuant to the Commercial Rent Coronavirus Act 2022 (CRCA).
6. However, before proceeding with the Arbitration in respect of any PRD the question of validity of the application for relief from same is in question. The Respondent claims that the Applicant has not complied with the pre-arbitrator's steps. It is thereby argued that the dispute about any PRD is not eligible for Arbitration.
7. Accordingly, I must consider what steps and processes were undertaken by the Applicant and Respondent in the context of compliance with the requirements of the CRCA for resolving disputes about any PRD.
8. I thereby set out what procedures have been adopted.

#### **Procedural Background**

9. I have been appointed in the capacity of Arbitrator under the provisions of the CRCA following an application having been made by the applicant to the Royal Institution of Chartered Surveyors.
10. I have been supplied with a variety of documents, as well as copies of correspondence and e-mails by the RICS, as supplied to them by the parties.
11. [REDACTED] made an application to the RICS on 23 September 2022 by way of e-mail, as an initial approach.
12. On 27 October 2022 [REDACTED] of the Dispute Resolution Service of the RICS sent an e-mail to [REDACTED] acknowledging receipt of an application for CRAA3. This is effectively the starting point of these proceedings.
13. On 30 January 2023 [REDACTED] confirmed to [REDACTED] that the RICS had received the application fee of £540.
14. On the same day [REDACTED] of the RICS wrote to [REDACTED] of [REDACTED] copied to [REDACTED], advising that the RICS will proceed to appoint an Arbitrator. It was stated then that this would be to conduct an Arbitration under Procedure D of the RICS Scheme for CRCA Disputes. [REDACTED] confirmed that the RICS had received a reference to Arbitration and a formal proposal with supporting documents from the applicant.
15. [REDACTED] of [REDACTED] was advised that there was now an opportunity to submit a formal proposal in response to the applicant's proposal within 14 days of receiving it. (Clause 10 (b)) of CRCA.
16. On 30 January, the RICS DRS wrote to myself with details of the case and inviting me to consider it.
17. I replied on the same day confirming that I will be prepared to act in the matter.

18. 9 February [REDACTED] of [REDACTED] wrote to the RICS DRS, with a copy to [REDACTED], and enclosed a formal proposal in response.
19. On 14 February 2023 I received confirmation that I had been appointed by the RICS as Arbitrator. This also noted that the matter was to be dealt with under Procedure D.
20. On 15 February I acknowledged my appointment as Arbitrator.
21. On 23 March I wrote to [REDACTED] and [REDACTED] confirming my appointment. I noted that [REDACTED] had raised matters, and I proposed that a meeting be arranged between the parties and myself, by way of Zoom.
22. I was advised on the same day that [REDACTED] would be taking over the case from [REDACTED].
23. I note that the key documents which have been provided to me by the RICS, following receipt of them from the parties are as follows: -
  - i. CRAA 3 dated 27 October 2022.
  - ii. Formal proposal by the tenant.
  - iii. Letter from [REDACTED] solicitors dated 23 September 2022 addressed to the Directors of [REDACTED].
  - iv. A tenant's application to the RICS dated 18 August 2022. There is no evidence accompanying this that it had been served.
  - v. CRAA 2 signed by [REDACTED] [REDACTED] of [REDACTED] [REDACTED] dated 22 September 2022. [REDACTED] [REDACTED] are noted to be the managing agents of the landlords.
  - vi. A response to the reference to Arbitration by [REDACTED] [REDACTED] of [REDACTED] [REDACTED] dated 14 October 2022.
24. There was a delay in moving matters forward, but on 13 April 2023 I was able to conduct a Zoom meeting with [REDACTED] and [REDACTED].
25. The Zoom meeting embraced a number of matters.
26. First, [REDACTED] made the point that the business is conducted from industrial premises, but that part of this is a retail function. He submits that this is a quasi-retail premises. He further says that the business was fully closed during the Pandemic.
27. [REDACTED] asked if the business was the subject to a closure order. No answer has been provided on this point.
28. [REDACTED] stated that a significant part of the business was affected in the Pandemic, and that the business was effectively mothballed for 18 months.
29. [REDACTED] asked whether or not a CRAA 1 was served on the landlord. [REDACTED] advised that there had been several points of contact but that these were usually with [REDACTED], rather than directly with the landlords. He accepted that he may not have adopted a correct procedure. He emphasised that all contact with the landlord is through their agents, [REDACTED] confirmed this.
30. [REDACTED] said that there is some outstanding rent which he placed at around £7,000. He also said there had been a legal bill from [REDACTED] in the sum of £5,000 relating to legal disputes. [REDACTED] said that she considered that this is not part of the matter in hand.
31. [REDACTED] asked for more time to understand the procedure which needed to be adopted.
32. [REDACTED] stated that the main issue is whether or not this case is suitable for being dealt with by way of Arbitration.

33. The meeting was concluded on the basis that a pre-arbitration ruling would be made by me as to whether or not this is a case which is appropriate for Arbitration under the CRCA 2022.
34. There has been a notable delay in being able to take this matter forward, due to a number of personal difficulties encountered by [REDACTED] in recent weeks. However, I was advised by the RICS DRS that the agreed budget fee of [REDACTED] plus VAT had been lodged with them by [REDACTED].
35. I therefore was able to take up the matter. However, before proceeding to consider the documentation before me, I invited the parties by way of my email of 13 September to let me know whether or not there was any other documentation or matters which they wished to raise relating not the issue in hand.
36. I then received an email from [REDACTED] on 20<sup>th</sup> September setting out a number of additional matters. This also included the following:
- i) Email dated 21<sup>st</sup> May 2021 addressed to [REDACTED];
  - ii) Email dated 7<sup>th</sup> September 2023 addressed to [REDACTED];
  - iii) Email dated 21<sup>st</sup> September 2023 addressed to [REDACTED];
37. I also received an email from [REDACTED], dated 21<sup>st</sup> September, in which [REDACTED] noted a number of matters.
38. Both parties have been supplied with a copy of these emails.

**Procedure for making a reference to Arbitration.**

39. The CRCA provides under clause 10 the requirements for making a reference to Arbitration.
40. The starting point for any Arbitration under the CRCA is as follows: -
- Clause 10 (1) Before making a reference to Arbitration –
    - (a) The tenant or landlord must notify the other party (the respondent) of their intention to make a reference, and
    - (b) The respondent may, within 14 days of receipt of the notification under Paragraph (a), submit a response.
  - (2) The reference to Arbitration must not be made before –
    - (a) The end of the period of 14 days after the day on which the response under sub section (1) (b) is received, or
    - (b) If no such response is received, the end of the period of 28 days beginning with the day on which the notification which under subsection (1) (a) is served.
41. Under Clause 10 this then goes on further as follows: -
- (3) A reference to Arbitration must be made to an approved Arbitration body.
42. The RICS is such a body, and therefore once an application is made to them, the procedure to be adopted is as set out in their guidance. This is in the "A Guide For Users" – Covid Rent Arrears Arbitration.

43. That Arbitration process is clearly set out within the guide and provides for four separate Arbitration procedures to be adopted. The appropriate procedure under the RICS scheme is as listed under Arbitration A, B, C, and D.
44. As noted above the applicant made an application to the RICS for this Arbitration to proceed with an Arbitrator being appointed.
45. My appointment was made on 15 February 2023 and the RICS notified me that the matter would proceed under the RICS Arbitration Procedure D.
46. Under Arbitration D there is provision for formal submissions to be made to the Arbitrator. In addition, it provides for a pre-arbitration discussion to take place between the arbitrator and the parties. This is intended to agree how the arbitration would be conducted, how long it may take the arbitrator to deal with the evidence, and thereby enable the parties to agree a fee structure which is appropriate.
47. The guidance also provides that once agreed between the parties and the Arbitrator then the RICS would be advised of that sum, who would then arrange for it to be collected from the applicant.
48. In this instance it was appropriate to hold a pre-arbitration discussion for the manner in which this case will be progressed, and such Zoom meeting took place on 13 April 2023.

#### **Contents of Documentation Submitted**

49. As under Clause 10 of the CRCA the starting point for a reference to Arbitration about a disputed PRD is that the applicant must notify the respondent of their intention to make a reference (Clause 10 (1) (a)).
50. An application to an approved Arbitration body cannot be made before a) 14 days after the notice has been served and when the respondent submits a response to the applicant, or b) 28 days after such notice if the respondent does not submit a response.
51. In any event an application to appoint an Arbitrator is not permitted after 24 September 2022.
52. Hence, in order for an application for reference to Arbitration to succeed, there are two tests:
  - (i) The applicant must notify the Respondent of their intention to make a reference to Arbitration; This must be by 26 August 2022; and
  - (ii) An application to an approved Arbitration Body must be made before 24 September 2022.
53. ██████ says that he served notice of intention to Arbitrate on the Respondent and has produced such document which is dated 18<sup>th</sup> August 2022. He refers to this in his email of 21<sup>st</sup> September to ██████.
54. Nothing has been put before me which confirms that the said notice was received by the Respondent. However, ██████ completed a "Response to the Reference to Arbitration" dated 14<sup>th</sup> October 2022.
55. ██████ has produced a form CRAA2 dated 22<sup>nd</sup> September 2022 and signed by one ██████ of ██████.
56. It is agreed by both parties that ██████ are the Managing Agents for this property on behalf of the Landlords (Respondents).

- 57. It is therefore clear to me that [REDACTED] did indeed serve a CRAA1 notice on the Respondent, most likely to the Managing Agent, [REDACTED]. Otherwise [REDACTED] of the company would not have signed form CRAA2.
- 58. The test at 52 (i) above is therefore satisfied.
- 59. Turning to the second test at 52 (ii) above, I have been sent a copy of CRAA3 dated 23<sup>rd</sup> September 2022 which was submitted to the RICS.
- 60. Accordingly, therefore the second test is satisfied.
- 61. I now consider the PRD issue.
- 62. In the CRAA2 the Respondent's Agent notes that "a protected rent debt as contemplated by the Act does not exist". There is no explanation given as to this position.
- 63. The second thread of this dispute relates to the matter of Protected Rent Debt. The Respondent claims that this does not exist.
- 64. In support of that position the Respondent relies on two points: -
  - i) Whether or not the tenancy was "adversely affected by Coronavirus (Clause 4 CRCA), and
  - ii) That the business was subject to a requirement imposed by Coronavirus Regulations to close.
- 65. They say that retailers were permitted to remain open, and that this included launderettes/dry cleaners. The subject premises are at least partly used for these purposes. Thereby it is claimed that the business could remain open for trading and therefore was not adversely affected.
- 66. It follows from this, they contend, that no PRD exists and can therefore be the subject of an Arbitration.
- 67. The Applicant chose to close down the business activity during the Coronavirus Pandemic, and as a consequence of that decision it may be concluded that the business was adversely affected. However, the adverse effect was not as a result of imposition but choice on the part of the Applicant.
- 68. I cannot therefore come to the conclusion that this act or event constituted something which brought about a PRD.

**Conclusion**

- 69. I therefore FIND that this matter is not one for Arbitration under the CRCA and there is no Protected Rent Debt to deal with.

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 BARRY G. CRUX FRICS ACI Arb

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 Date